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SUPREME COURT
STATE OF WASHINGTON
IN THE SUPREME COURT OF THE STATE OF WASHINGTON
2007 MAY 16 A 10:19

In re

BY RONALD R. CARPENTER

Supreme Court No. 200,470-9

JACK L. BURFCH,

CLERK

Lawyer (Bar No. 4161).

ASSOCIATION'S REPLY TO
RESPONDENT'S
"DECLARATION"

The Washington State Bar Association (Association) submits this reply to the "Declaration" submitted by Respondent in response to the Association's Petition for Interim Suspension.

**A. RESPONDENT'S DECLARATION DOES NOT MEET
THE BURDEN UNDER ELC 7.2(a)(2) BECAUSE IT
APPLIES THE WRONG STANDARD**

The Association filed its Petition for Interim Suspension under Rule 7.2(a)(2) of the Rules for Enforcement of Lawyer Conduct (ELC). Under ELC 7.2(a)(2), "[w]hen the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for respondent's suspension." ELC 7.2(a)(2) presumes that Respondent's continued practice of law is detrimental to the integrity and standing of the Bar when the Disciplinary Board recommends disbarment. Under ELC 7.2(a)(2), "respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or contrary to the public interest."

In his response, Respondent submitted a “Declaration”¹ citing the standard for seeking interim suspension under ELC 7.2(a)(1). The “Declaration” stated: “We believe that he is a highly competent and honest lawyer, and that his continued practice does not pose a substantial threat or [sic] serious harm to the public.” Unlike ELC 7.2(a)(2), ELC 7.2(a)(1) deals with petitions to seek interim suspension prior to the disciplinary hearing and prior to a decision by the Disciplinary Board. The “Declaration” submitted by Respondent addresses the wrong legal standard.

Respondent’s “Declaration” should be considered in the context of the reasons that the Hearing Officer and Disciplinary Board unanimously recommended disbarment. First, the statement in the “Declaration” regarding Respondent’s competence to practice law is irrelevant because that is not a reason that Respondent faces disbarment. Second, Respondent’s honesty towards fellow lawyers is a reason that Respondent faces disbarment. Respondent is facing disbarment, in part, because of his lack of honesty towards vulnerable clients and the court. In addition, Respondent is facing disbarment because he failed to comply with the order of the Disciplinary Board and has continued to engage in similar

¹ The “Declaration” submitted by Respondent was not signed under penalty of perjury.

misconduct towards clients regarding fees. On its face, the "Declaration" does not meet Respondent's burden because it does not address the reasons that Respondent's continued practice of law is detrimental to the integrity and standing of the Bar.

The issue presented to the Court is whether Respondent has affirmatively shown that his continued practice of law will not be detrimental to the integrity and standing of the Bar, given the unanimous decision by the Disciplinary Board recommending disbarment. The Hearing Officer and Disciplinary Board determined that disbarment was the presumptive sanction for five counts of misconduct, including (1) filing a frivolous defense to avoid paying restitution ordered by the Disciplinary Board, (Hearing Officer's Findings, Conclusions and Recommendations (FOF) ¶¶ 75-90), (2) intentionally misleading a judge and submitting false testimony in court (FOF ¶¶ 91-102), (3) intentionally refusing to pay restitution as ordered by the Disciplinary Board (FOF ¶¶ 103-111), and (4) refusing to return unearned fees to a disabled client on fixed income after failing to diligently represent her (FOF ¶¶ 160-163).

The Hearing Officer's decision, as adopted by the Disciplinary Board, found that of the ten aggravating factors, "the most troubling of these is the Respondent's false testimony during this proceeding concerning the nature of his agreement with Ms. McGuin. The

presentation of false testimony strikes at the core values of our legal system and substantially undermines the disciplinary process.” FOF at 49.

Respondent’s dishonesty towards the tribunal and refusal to comply with orders by the tribunal is not an isolated incident. Respondent’s last two disciplinary matters involved sanctions against him for failing to comply with court orders. Appendix 1, Appendix 2, and Appendix 3.

In addition, in Vissers v. Coastal Community Church, Respondent’s repeated and deliberate violation of court orders resulted in a mistrial and dismissal of the case. In his oral ruling, Judge McCauley stated to Respondent that “you misrepresent to this Court on a regular basis and you make statements without any support in fact or substance.” Appendix 4 at 19.²

The public may and should perceive that the disciplinary system is failing to protect them if Respondent is permitted to continue to practice law, given the unanimous recommendation for disbarment by the Disciplinary Board, the seriousness of the misconduct, and Respondent’s prior disciplinary history,. The disciplinary system would be exposed to criticism and ridicule if Respondent could overcome the presumption of

² The transcript of Judge McCauley’s decision was admitted during the hearing. See FOF at 6. Judge McCauley’s oral decision was appealed by Respondent and affirmed by Division Two. See FOF at 36, footnote 7.

suspension under ELC 7.2(a)(2) by submitting the "Declaration" and response Respondent has filed. In short, Respondent has not met his burden and should be immediately suspended.

**B. SIGNATURES ON RESPONDENT'S "DECLARATION"
ARE INSUFFICIENT TO MEET RESPONDENT'S
BURDEN OF PROOF**

Respondent untimely filed the "Declaration" four days after the May 10, 2007 deadline set forth in the Order to Show Cause. Given the little time provided, the Association was unable to inquire about all of the signatories to the "Declaration," but can provide the following information about four of the signatories that should impact the weight given to the "Declaration:"

1. John Fara, (Bar No. 4164). Mr. Fara represented Respondent at the disciplinary hearing that resulted in his prior suspension. When Mr. Fara previously represented Respondent, he argued that "it is obvious that the rules of lawyer discipline are only general guidelines." Appendix 5. This Court categorically rejected this assertion. In re Disciplinary Proceeding Against Burtch, 112 Wn.2d 19, 21, 770 P.2d 174 (1989). In these proceedings, Mr. Fara testified for Respondent as an "expert witness" on interpreting the Rules of Professional Conduct (RPC). The Hearing Officer found Mr. Farra's testimony was "of limited utility as it contradicted applicable legal authority." FOF at 5.

2. Therese Wheaton, (Bar No. 18208). Ms. Wheaton is Respondent's co-counsel in this disciplinary matter. Ms. Wheaton's signature regarding Respondent's honesty is surprising, given that she was present during the disciplinary hearing when Respondent gave conflicting testimony. See, e.g., Appendix 6.

3. Michele Hasseth, (Bar No. 29934). Ms. Hasseth is Respondent's daughter. She is employed at Respondent's law office.

4. William Morgan, (Bar No. 4529). Mr. Morgan testified in these proceedings as Respondent's "expert witness" on interpreting the RPC. FOF at 4. The Hearing Officer found that the Respondent's expert witnesses, including Mr. Morgan, were of limited assistance. FOF 5.

CONCLUSION

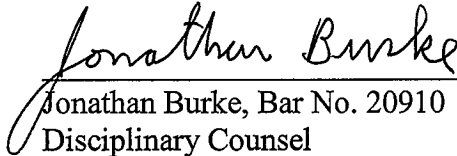
The Association asks this Court to find that Respondent has not met his burden to demonstrate that his continuing practice of law will not be detrimental to the integrity and standing of the Bar and the administration of justice, or be contrary to the public interest, and enter an

order immediately suspending Respondent from the practice of law.

DATED THIS 15th day of May, 2007.

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION



Jonathan Burke, Bar No. 20910
Disciplinary Counsel

1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 733-5916

EXHIBIT

A-33

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

RECEIVED

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W.S.B.A.

In re)	Bar No. 4161
JACK L. BURTCH,)	STIPULATION TO REPRIMAND
An Attorney at Law.)	AND PROBATION

Pursuant to Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation for Discipline is entered into by the Washington State Bar Association, through state bar counsel, Randy Beitel, the respondent attorney, Jack L. Burtch, and William J. Rush, his counsel.

STIPULATED FACTS

1. Respondent Jack L. Burtch was admitted to the practice of law in the State of Washington on September 14, 1955. At all times material to this complaint, he practiced in Grays Harbor County, Washington.

2. On or about June 19, 1979, Vallory Austin, a minor, was sexually abused and neglected in a foster home in which she had been placed by the representatives of the State of Washington.

3. The child's mother, Bonnie Barker, consulted Mr. Burtch by a letter dated October 31, 1979 regarding what legal action could be taken for damages on behalf of herself and her daughter, Vallory Austin.

4. On March 31, 1981, Ms. Barker paid Mr. Burtch \$400 and authorized the filing of a legal action for damages. Mr. Burtch

1 did not file the action until June 18, 1982. The suit named as
2 defendants the State of Washington and other private individuals
3 and alleged emotional injury.

4 5. In November of 1982, Mr. Burtch was served with interrog-
5 atories to be answered by his clients. Mr. Burtch did not at that
6 time consult with his clients regarding the interrogatories. When
7 the interrogatory answers were not timely filed, the defendants
8 brought a motion to compel on April 29, 1983 and on May 13, 1983,
9 the Court ordered that the answers to the interrogatories be filed
10 on May 20, 1983 or the matter would be dismissed. Mr. Burtch did
11 not consult with his client until May 20, 1983 at which time he
12 obtained the answers to the interrogatories and filed the same on
13 May 20, 1983.

14 6. Mr. Burtch took no action on the case between May 1983
15 and September 19, 1984 at which time the clerk filed a motion for
16 dismissal for lack of prosecution. At Mr. Burtch's request, the
17 motion for dismissal was stricken on November 13, 1984.

18 7. Mr. Burtch did nothing further on the case from November
19 13, 1984 until May 22, 1986 when the clerk filed a second motion
20 for dismissal for lack of prosecution. In response Mr. Burtch
21 filed a motion for trial setting.

22 8. After the note for trial setting, the defendants noted
23 the deposition of Mr. Burtch's clients by serving notice on Mr.
24 Burtch. Mr. Burtch did not advise Ms. Barker of the deposition.
25 As a result of Mr. Burtch's failure to advise his client of the
26 deposition, on November 10, 1986 an order was entered by the court
27 requiring that the plaintiffs attend the depositions. Only after

1 the Court's order, did Mr. Burtch advise his clients of the
2 deposition.

3 9. In the answers to the interrogatories filed by Mr. Burtch
4 on May 20, 1983, in response to a question regarding the experts
5 the plaintiff intended to call as witnesses, the plaintiff stated
6 that her attorney had not yet consulted with an expert but that she
7 expected him to do so and that the information would be supplied as
8 obtained.

9 10. With a trial date of February 10, 1987 and no further
10 information having been supplied by plaintiff regarding experts, on
11 December 23, 1986, the defendants' attorney sent to Mr. Burtch a
12 request that the plaintiff supplement her answers to the interroga-
13 tories.

14 11. The February 10, 1987 trial date was continued by
15 agreement. On February 2, 1987 the defendant moved for a schedule
16 of discovery and on March 16, 1987, the Court ordered a discovery
17 cutoff date of March 31, 1987 as the last date for designation of
18 the plaintiff's expert witnesses.

19 12. Mr. Burtch made no effort to retain an expert witness
20 prior to March 31, 1987. At the time he undertook the case Mr.
21 Burtch was aware that expert testimony was essential to establish-
22 ing the plaintiff's claims. The plaintiff made no money available
23 to hire an expert. Mr. Burtch had no funds to advance the cost of
24 hiring an expert. Mr. Burtch however made no effort to withdraw
25 and advise the plaintiff to seek counsel who was prepared to
26 advance the costs of an expert. As a result Mr. Burtch did not
27 give any notice of intended use of experts prior to the defendants'

1 April 29, 1987 deposition of plaintiff's treating physician, D.
2 Kenneth Hunt. At the conclusion of the deposition, Mr. Burtch
3 determined that he would probably use Dr. Hunt as an expert witness
4 on behalf of Ms. Barker and so advised defendants at that time.

5 13. After Dr. Hunt's deposition Mr. Burtch made arrangements
6 to associate the law firm of Paul Bitar, who agreed to advance the
7 funds to hire an expert witness. Mr. Burtch then made arrangements
8 for Dr. Christian Harris to review the matter. Without any prior
9 requests to extend the March 31, 1987 deadline for designating
10 experts, on May 5, 1987, Mr. Burtch served notice on defendants'
11 attorney that plaintiff had retained Dr. Harris as an expert.

12 14. Defendants moved for dismissal of the action based upon
13 plaintiff's failure to comply with the Court's previous order
14 setting a deadline of March 31, 1987 for a designation of plain-
15 tiff's expert witnesses. At the hearing on that motion, Mr. Burtch
16 gave as the only excuse for failure to comply with the order being
17 his own lack of money to hire an expert.

18 15. By memorandum decision dated May 20, 1987, the Honor-
19 able David Foscue ruled that the plaintiffs could add the name of
20 Dr. Harris as an expert witness but only on the payment of \$1,350
21 in terms to defendants' lawyers. In Judge Foscue's Memorandum
22 Decision, he put the plaintiff on notice that further actions
23 hindering the progress of the case would likely result in dismiss-
24 al. Mr. Burtch did not advise his client of the May 20, 1987
25 memorandum decision and paid the terms of \$1,350 from funds
26 advanced by Mr. Bitar.

27 16. Because Mr. Burtch had refused to waive the physician-

1 patient privilege with respect to his clients, defendants filed a
2 motion to dismiss for failure to waive the privilege. At the June
3 19, 1987 hearing on this motion, Mr. Burtch waived the physi-
4 cian-patient privilege only as to those matters pertinent to the
5 lawsuit because it was obvious that the court was about to declare
6 that there was a waiver by bringing the lawsuit. The court then
7 ruled that the privilege was waived as to both plaintiffs. Mr.
8 Burtch did not consult with his clients prior to waiving the
9 physician-patient privilege.

10 17. On December 3, 1987, the attorney for one of the
11 defendants mailed subpoenas duces tecum to two custodians of the
12 medical records of the plaintiffs. A notice of the deposition was
13 given to Mr. Burtch. Mr. Burtch considered the depositions
14 improper because they were noted for an improper location, the
15 subpoenas had not been properly served, the depositions had been
16 noted by a party who had been dismissed from the suit, and they
17 were scheduled after the discovery cut-off time. Mr. Burtch did
18 not however move to quash the subpoenas. Although he was aware
19 that both Ms. Austin and Ms. Barker were concerned about inquiries
20 into their personal histories, Mr. Burtch did not contact them and
21 discuss the discovery request. On December 8, 1987, Mr. Burtch
22 telephoned Tom Warren of the Thurston County Cooperative Special
23 Services, one of the records custodians, and advised him that the
24 plaintiff had not waived any relevant privilege and that if he
25 released records to the defendants that he would be liable.

26 18. On December 9, 1987, Yvonne Elliott of St. Peters
27 Hospital, one of the records custodians, contacted Mr. Burtch at

1 which time Mr. Burtch advised her not to mail any records to
2 anyone, but that she could attend the deposition.

3 19. Claims against all but the State of Washington defendant
4 were dismissed by summary judgment on December 8, 1987. The
5 remaining State of Washington defendant pursued a motion to dismiss
6 for interference with discovery which was heard on December 14,
7 1987. On January 7, 1988, the Honorable Michael G. Spencer issued
8 a memorandum decision finding that Mr. Burtch had thwarted
9 discovery through unnecessary delaying tactics, that he had
10 violated the rights of the remaining defendant for a speedy
11 determination of the issues which had been placed before the court
12 and that the exercise of other sanctions had not had any ameliorat-
13 ing effect on Mr. Burtch's conduct. Judge Spencer granted the
14 remaining defendant's Motion to Dismiss with Prejudice and a formal
15 order dismissing the case was entered on February 1, 1988.

16 20. Mr. Burtch did not keep his clients advised of the
17 defendants' motion to dismiss. After the entry of the February 1,
18 1988 order of dismissal, Mr. Burtch did not send Ms. Barker a copy
19 of the opinion and order of dismissal.

20 21. At his own expense Mr. Burtch pursued an appeal to the
21 Court of Appeals from the dismissal. That appeal has been denied.
22 As a result, plaintiffs lost their opportunity to seek recovery for
23 their emotional damages, which are speculative in nature and
24 undetermined in amount. Mr. Burtch has made no offer to compensate
25 his former clients for any damages arising out of the dismissal of
26 their lawsuit.

27 //

STIPULATED VIOLATIONS

22. Mr. Burtch's conduct in repeatedly failing to comply with the discovery rules such that the action was dismissed with prejudice constitutes a violation of Rules for Lawyer Discipline (RLD) 1.1(i) in that it violates Rules of Professional Conduct (RPC) 3.4(c) prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal and RPC 3.4(d) prohibiting a lawyer from failing to make reasonably diligent efforts to comply with the legal and proper discovery requests by an opposing party.

23. Mr. Burtch's conduct in failing to keep his client advised of the interrogatories and depositions, and failing to keep the clients advised of the motions for dismissal due to discovery violations, and his further failure to consult his clients regarding responses to discovery and waiving the physician-patient privilege constitutes a violation of RLD 1.1(i) in that it constitutes violations of RPC 1.4(a) requiring that a lawyer keep a client reasonably informed about the status of a matter, and RPC 1.4(b) requiring that a lawyer explain the matter to the extent reasonably necessary to allow a client to make an informed decision regarding the representation.

24. Mr. Burtch's conduct in failing to prosecute the matter which resulted in two clerk's motion to dismiss, and failing to timely answer discovery constitutes a violation of RLD 1.1(i) in that it constitutes violations of RPC 1.3 requiring that a lawyer act with reasonable diligence and promptness in representing a client, RPC 3.2 requiring that a lawyer make reasonable efforts to expedite litigation consistent with the interest of the client, and

1 Code of Professional Responsibility (80 Wn.2d 1119, rescinded
2 effective September 1, 1985) DR6-101(A)(3) prohibiting neglect of
3 a legal matter.

4 ABA STANDARDS

5 25. The ABA Standards for Imposing Lawyer Sanctions (ABA
6 Standards) provide at §4.42 that

7 Suspension is generally appropriate when:

8 (a) a lawyer knowingly fails to perform services
9 for a client and causes injury or potential
10 injury to a client; or

11 (b) a lawyer engages in a pattern of neglect
12 and causes injury or potential injury to a
13 client.

14 The ABA Standards further provide at §6.22 that

15 Suspension is generally appropriate when a
16 lawyer knows that he or she is violating a
17 court order or rule, and causes injury or
18 potential injury to a client or a party, or
19 causes interference with a legal proceeding.

20 26. The ABA Standards require consideration of various
21 aggravating factors. Relevant here are the factors of:

22 Pattern of Misconduct. When viewed in light of the prior
23 discipline, this misconduct is part of a pattern of delaying and
24 neglecting client matters.

25 Substantial Experience in Practice. Mr. Burtch has been in
26 practice for 35 years.

27 27. The ABA Standards also require consideration of mitigat-

1 ing factors. Relevant here are the factors of:

2 Absence of a Dishonest or Selfish Motive.

3 Effort to Rectify Consequences of Misconduct. Although not
4 successful, Mr. Burtch did pursue an appeal of the dismissal of his
5 client's lawsuit.

6 Personal or Emotional Problems. The misconduct occurred
7 during a period of personal and emotional problems which the
8 Supreme Court has held to be a "major and decisive mitigating
9 factor." In re Burtch, supra. at 28. As summarized by the Court,

10 a dispute with a former partner led to a 1983

11 judgement against Burtch in excess of

12 \$100,000. Financial disaster ensued. Burtch

13 was unable to supersede the judgement while it

14 was on appeal. Bank accounts were garnished,

15 execution issued against his books and equip-

16 ment, he lost his home and office building.

17 Depression naturally set in for Burtch and his

18 wife who had been his long-time bookkeeper.

19 They separated. His long-time secretary left.

20 He and his wife filed a Chapter 11 proceeding.

21 He and his wife have reconciled, she is back

22 in his office. The judgment has been re-

23 solved. Burtch expresses a belief that the

24 problems which led to this series of events

25 are resolved and that he can practice properly

26 as he had done without client complaint for

27 over 25 years. Id.

1 Prior Disciplinary Offenses. On February 9, 1989 the Supreme
2 Court ordered that Mr. Burtch be suspended from the practice of law
3 for 45 days and be placed on probation for two years as the result
4 of the complaints of six clients. The Court found three violations
5 of RPC 1.5(b) (failure to communicate fees); six violations of RPC
6 1.3 and RPC 3.2 (lack of diligence and failure to expedite
7 litigation); two violations of RPC 1.4 (failure to keep client
8 fully informed); two violations of RPC 1.15(d) (failure to return
9 client documents and unearned fees); one violation of RLD 13.3
10 (failure to timely file trust account declaration); and one
11 violation of RLD 2.8 (failure to cooperate with disciplinary
12 investigation). In re Burtch, 112 Wn.2d 19, 770 P.2d 174 (1989).

13 On October 4, 1982 Mr. Burtch received a letter of admonition
14 (under the Discipline Rules for Attorneys) from the Disciplinary
15 Board for neglecting a legal matter and failing to carry a contract
16 of employment for legal services. On January 13, 1983 Mr. Burtch
17 received a letter of admonition (under the Discipline Rules for
18 Attorneys) from the Disciplinary Board for delay in completing a
19 probate and in responding to a Bar Association investigation. On
20 April 14, 1989 Mr. Burtch received an admonition from the Disci-
21 plinary Board for failing to act with reasonable diligence and
22 promptness in representing a client in violation of RPC 1.3;
23 failing to keep a client reasonably informed about the status of a
24 matter in violation of RPC 1.4(a); and failing to make reasonable
25 efforts to expedite litigation consistent with the interest of the
26 client in violation of RPC 3.2.

27 //

1 Imposition of Previous Sanctions. This misconduct occurred
2 during the same time frame as the series of misconduct which
3 resulted in the Court imposing a 45 day suspension and 2 years
4 probation. If this matter had been timely referred to the
5 Association and not by anonymous complaint filed after the other
6 matters were already at the hearing stage, this matter would have
7 been included in the previous disciplinary proceeding.

8 28. In light of the fact that Mr. Burtch has already served
9 a suspension for the misconduct during the period of time involved
10 in this matter; in light of Mr. Burtch having successfully
11 participated in his period of probation, which will be completed
12 February, 1991; in light of Mr. Burtch's participation in the
13 Lawyer's Assistance Program; and in light of the "major and
14 decisive" emotional problems, bar counsel, Mr. Burtch and his
15 counsel, Mr. Rush stipulate to resolution of this matter by
16 issuance of a reprimand, and an extension of the period of
17 probation by one year under the same conditions as provided by the
18 Court, In re Burtch, supra. at 29, and continued cooperation with
19 any counseling required by the Lawyers Assistance Program during
20 the period of probation.

21 29. Pursuant to RLD 5.7 Mr. Burtch agrees to pay costs to the
22 Association in the amount of \$200 within 30 days of approval of
23 this stipulation by a Review Committee of the Disciplinary Board.

24 30. Upon approval of a Review Committee of the Disciplinary
25 Board this stipulation and any order approving the same will be
26 deemed a public document under RLD Title 11.

27 //

LIMITATIONS

31. Respondent Burtch, his counsel and state bar counsel agree that this Stipulation along with all relevant documents which are required by Disciplinary Board policy shall be re-viewed by the Disciplinary Board. Unless the document is a part of the stipulation it shall, pursuant to RLD 4.14(c) remain confidential.

32. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Bar Association as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

33. If this Stipulation is approved by a Review Committee, it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

34. If this Stipulation is not approved by a Review Committee, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

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1 WHEREFORE the undersigned being fully advised, adopt and
2 agree to the facts and terms of this Stipulation for Discipline
3 as set forth above.

4 DATED this 25 day of April, 1998.

6
7 By Jack L. Burto
8 Jack L. Burto, Bar No. 4161
9 Respondent Attorney

10 APPROVED:

11 William J. Rush
12 William J. Rush, Bar No. 3112
13 Attorney for Respondent

14 Randy Beitel
15 Randy Beitel, Bar No. 7177
16 State Bar Counsel

FILED

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

JUL 10 2002

DISCIPLINARY BOARD

Public No. 00#00035

In re

JACK L. BURTCH,

Lawyer

Bar No. 4161

DISCIPLINARY BOARD ORDER
REGARDING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION

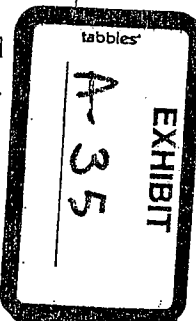
This matter came before the Disciplinary Board on April 13, 2001 on an RLD 6.1 review of the Hearing Officer's suspension recommendation. The Board approves the Hearing Officer's Findings of Fact, amends the Conclusions of Law and recommends an admonition.¹

The Board reverses the Hearing Officer's Conclusion of Law as to Count I. The Findings of Fact in this matter do not support a conclusion that Mr. Burtch failed to prepare for trial. The Hearing Officer found that the two cases were continued several times for a variety of reasons, only one of which was Mr. Burtch's statement that he was not prepared. The Hearing Officer found that the Court interpreted Mr. Burtch's October 6, 1993 motion to be made because he was not prepared to proceed to trial. Ms. McGuinn testified that she and two witnesses met with Mr. Burtch prior to trial. She indicated that he generally prepared her for trial and discussed documents with her. She also indicated that she gave him 27 boxes of documents prior to trial. She testified that they discussed many of the documents with Mr. Burtch. She also testified that one of the continuances was necessary because Mr. Burtch was prepared to go forward on one of her cases and the other lawyers were prepared on the second case. In a footnote, the Hearing Officer stated that Special Disciplinary Counsel indicated that Mr. Burtch did not fail to represent Ms. McGuinn when the case went to trial. The record does not support a conclusion that Mr. Burtch was not prepared for trial.

The Board affirms the remaining Conclusions of Law. Mr. Burtch violated RPC 1.3 by failing to remind the judge that the sanctions were to be entered against him, not his client; 1.5(a) and 8.4(d), by requiring his client to pay these terms that were meant for him; and 1.5(b), 1.4(b) and 1.14(b)(3) by failing to provide clear billing statements and information to his client. We must now determine the appropriate sanction for these violations.

The Hearing Officer found that Mr. Burtch's mental state was negligence. The Board agrees. The client was injured by having to pay the sanctions the court ordered against Mr.

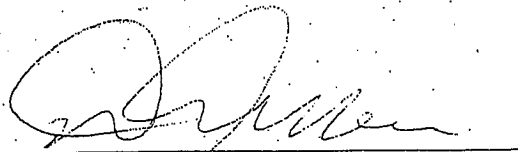
¹ The vote on this matter was 8-2. Dullanty, Cullen, Horne, Klein, Brandon, Hayton, Weatherhead and D. Smith voted in the majority. Bonnell and Delphy voted in the minority and would have affirmed the hearing officer's decision, including sustaining Count 1 and the suspension recommendation.



034

1 Burtch. The Hearing Officer found that the presumptive sanction was reprimand. The
2 reversal of Count 1 reduces this to admonition. Mr. Burtch has prior discipline: a
3 suspension in 1989 and a reprimand in 1991. Although the Board usually prefers to follow
4 a path of progressive discipline, in this case, Mr. Burtch's conduct does not warrant more
5 than an admonition.

6 Dated this 9th Day of July, 2002

7 
8 _____
9 David Cullen for the Disciplinary Board

FILED

FEB 02 2004

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JACK L. BURTCH,

Lawyer (WSBA No. 4161).

Public No. 00#00035

ADMONITION

Pursuant to Rule ELC 13.5(c) and former RLD 5.5A and 2.3(f)(4), the Disciplinary Board issues the following admonition:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in the state of Washington.

FACTS

2. In 1988 you began representing a client in a suit alleging fraud by a President of a Bank that had handled some of the client's investments. At a hearing in the matter in May 1996, the judge assessed terms against you personally for disregarding the Judge's instructions regarding permissible voir dire questions to the jury. At a subsequent hearing on November 4, 1996 to determine the amount of the terms, you failed to remind the Court that the terms were assessed against you, and not your client. The court entered an order assessing the terms against your client, and you used her funds to pay the terms. You also failed to adequately

EXHIBIT

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1 communicate with your client and did not provide your client with clear billing statements or
2 regular accountings of her funds in your client trust account.

3 MISCONDUCT

4 3. By failing to remind the court that terms had been assessed against you and not
5 your client and requiring your client to pay terms meant for you, you violated Rules 1.3, 1.5(a)
6 and 8.4(d) of the Rules of Professional Conduct. In failing to provide clear and regular billing
7 and trust account statements to your client, you violated Rules 1.4(b), 1.5(b) and 1.14(b)(3) of
8 the Rules of Professional Conduct.

9 ADMONITION

10 YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is
11 not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in
12 subsequent discipline or disability proceedings involving you.

13 Dated this 27th day of January, 2004.

14
15 Gretchen Baumgardner
16 Gretchen Baumgardner, Chairperson
17 Disciplinary Board

18 CERTIFICATE OF SERVICE

19 I certify that I caused a copy of the Admonition
20 to be delivered to the Office of Disciplinary Counsel and to be mailed
21 to Jack L. Butch, Respondent/Respondent's Counsel
22 at PO Box A, 28 N Broadway St Aberdeen WA, by Certified/first class mail,
23 postage prepaid on the 3rd day of February, 2004

24 S. C. C.
Clerk/Counsel to the Disciplinary Board

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR GRAYS HARBOR COUNTY

MARK J. VISSERS,)	
)	
Plaintiff,)	
)	
vs.)	NO. 97-2-00092-7
)	
COASTAL COMMUNITY CHURCH, a)	COURT'S RULINGS RE
nonprofit corporation, et al.,)	MOTION TO DISMISS OR
)	MISTRIAL
Defendant.)	

EXCERPT FROM VERBATIM REPORT OF PROCEEDINGS

BEFORE

THE HONORABLE F. MARK MCCAULEY

COPY

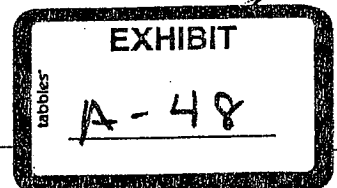
March 9, 1999
Courtroom No. 1
Grays Harbor County Courthouse
Montesano, Washington

A P P E A R A N C E S

FOR PLAINTIFF:	MR. JACK L. BURTCH Attorney at Law
FOR DEFENDANTS COASTAL COMMUNITY CHURCH, et al.:	MR. THOMAS A. BROWN Attorney at Law
FOR DEFEDANT RATHBUN:	MS. KATHLEEN PIERCE Attorney at Law
FOR DEFENDANT LAWSON:	MR. CLAYTON LONGACRE Attorney at Law

REPORTED BY: DIANE C. STANLEY, RPR, CSR (#LD6465PC)
OFFICIAL COURT REPORTER
GRAYS HARBOR COUNTY SUPERIOR COURT
102 W. BROADWAY, #203
MONTESANO WA 98563
(360) 249-6363

A-48



1 probably wasn't thinking of the order in limine, it didn't
2 really -- probably could have come in if he would have
3 requested to open the area regarding popularity because the
4 defendants did put in documents regarding these other
5 churches, and I probably would have said, Okay, I'm going to
6 allow some of that; I appreciate you inquiring before you
7 get into it. But you never did that, Mr. Burtch. You never
8 suggest to me that you have any concern for the Court's
9 rulings for what evidence should be brought before the jury.

10 And likewise, on this discovery violation, I've
11 already covered it, but it was something that I really
12 wanted to have a handle on what was provided to the defense
13 counsel regarding special damages before I allowed any real
14 testimony about the fact that he was applying for new jobs
15 and couldn't get jobs. There were a whole host of arguments
16 that the defense was making that I thought were persuasive,
17 but you kept telling me you gave them everything, and I
18 wanted to see what you gave them, and I told you, Show me
19 what you gave them and I may allow it, but I want to see it.
20 But you didn't show me.

21 And I don't know what I can do other than -- I
22 almost get to the point where I feel like the only way I can
23 get you to do something is to tell you to do it, and then
24 you probably won't do it because I'm telling you to do it.
25 It's very upsetting to me, and it goes along with these

1 other little things that sometimes they seem like little
2 things, but when I put them all together, it's a
3 significant, major problem that you've had throughout this
4 case, and that is that you misrepresent to this Court on a
5 regular basis and you make statements without any support in
6 fact or substance.

7 The latest example was when we're here -- and it's
8 something that seems insignificant, but in the scheme of
9 this whole presentation, it hits home to me. When they
10 raise the issue that they see Mrs. Vissers, your client's
11 mother, out talking with a witness and we've excluded
12 witnesses, they just ask that I have you caution her not to
13 discuss the testimony going on inside the courtroom, and I
14 think that's fine for them to ask that. They weren't
15 necessarily saying that she was doing that, but just to
16 remind her to not do that. And I thought that was a proper
17 thing. And a typical response from you is that: Well,
18 they've been talking to their witnesses. And there was a
19 visible reaction, immediate, of all three defense counsel
20 with: What have we done? I can't believe he's saying this,
21 sort of reaction, because they haven't even had their
22 witnesses come up to the courthouse yet. And then you try
23 to retract it and your client is telling you he meant
24 something else, but it's something where you just shoot off
25 your mouth without thinking, without knowing whether it's

BY MR. BURKE:

Q Mr. Farra, I'm Jon Burke from the Bar Association.

Are you the Mr. Farra that represented
Mr. Burtch in the disciplinary proceeding in 1987?

A That's the same person.

MR. BURTCH: I would object to
relevancy.

MS. FITZER: Overruled. Goes to the
weight to be given to his testimony.

Q Are you the one that made the argument that it's
obvious that the Rules of Lawyer Discipline are
only general guidelines?

A That's possible. I say a lot of things as an
attorney. I've represented 20 people in murder
cases, so --.

Q Is this a copy of your brief that you prepared for
that?

A It's not signed, but I assume maybe it's signed in
the back. I have a rather distinct signature.

That's my signature, sure is.

MR. BURTCH: May I see it, please? If
you're going to question him regarding that, I'd
like to see it.

I would object to it being handed to the

1 be a contingent fee agreement, and there shouldn't
2 have been the bill at all.

3 Now, if --

4 MR. BURTCH: I can answer that if you
5 want me to.

6 MS. FITZER: Yeah, answer that.

7 MR. BURTCH: I think that what
8 happened was that I'd kept track of my time, and
9 there were a bunch of cases that I hadn't been
10 getting paid on, and my staff sent them all in for
11 collection, and when I found out, I told them to
12 withdraw it from collection, is what I think
13 happened.

14 But it happened so long ago that I don't have
15 a good memory of it. But that's what I think
16 happened.

17
18 EXAMINATION

19 BY MS. FITZER:

20 Q I'm trying to determine what prompted this sending
21 of A-7, and your testimony previously during this
22 hearing was that it was because she turned you in
23 to the Bar Association, and now we're looking at
24 dates that seem to make that inconsistent.

25 So if A-7 was not prompted by that, then the

1 contingent fee agreement was never breached.

2 A The contingent fee agreement was breached when she
3 turned me in to the Bar and insisted that she had
4 paid sanctions. That was my position, has always
5 been my position.

6 Q I'm trying to make sure I understand this and that
7 this is not simply confusion.

8 Did the original invoice on 1/29/97 get sent
9 out inadvertently and then when you found out that
10 she turned you in to the Bar, did you take the
11 position that the bill was therefore valid; is that
12 the sequence of events?

13 A I don't know. What's the date that we recalled the
14 collection? There's an exhibit.

15 MS. WHEATON: That was in 1998.

16 MR. BURTCH: When did I receive the
17 complaint?

18 Q You sent it to collections on 4/2/97.

19 A Oh, okay.

20 Q So is that the sequence of events? The first bill
21 got sent out inadvertently. At the time it got
22 sent out, she was still on a contingent fee?

23 A Right.

24 Q And then when you got the grievance, you decided
25 that she in fact had breached your agreement and

1 therefore you sent it to the collection agency?

2 A No. It was sent to the collection agency, I
3 believe, before I even found out there was a
4 grievance.

5 Q Well, according to the paperwork, you sent the bill
6 on the 29th of January, 1997.

7 A What's the date on it?

8 Q The grievance was mailed to you on January 30th, '97.

9 A Okay.

10 Q And you sent it to collections on April 2nd, 1997,
11 two months later.

12 A Okay.

13 Q So is that why you sent it to collections, because
14 she breached your agreement?

15 A I'm not sure. I'm not sure of that. I don't know
16 if that was inadvertently sent to collections or
17 not. My position was that she didn't owe me any
18 money until she claimed she had paid sanctions and
19 she wouldn't have had to pay. That's all I can
20 say.

21 Q Mr. Burtch, I want you to take five minutes to sit
22 and talk to your attorney, and I want you to tell
23 me your official account of what the sequence of
24 events is, because what I have before me are
25 documents that establish the following sequence:

1 In December, at least December 1996, before
2 trial, you had a contingent fee agreement with this
3 woman. On January 29th, 1997, you sent her a bill.
4 You testified in prior proceedings that that bill
5 was inadvertent.

6 On January 30th, 1997, you were sent a cover
7 copy of her letter and a grievance cover sheet from
8 the Bar Association --

9 A That's --

10 Q -- and the next event that we have documented is
11 April 1997 where it was sent to collections.

12 And I want your best and final version of what
13 it is that happened in this sequence, because I've
14 heard inconsistent testimony consistently
15 throughout this, and quite frankly it's
16 inconsistent with your prior testimony in the
17 hearing, and I want you to sit there and think
18 about what you want to say is your position of how
19 the events occurred.

20 A But you've made one sequence there that I don't
21 recall. When was I advised by the Board that she
22 had made a complaint?

23 Q January 30th, 1997, you were sent a copy of her
24 letter and the grievance form.

25 A January of 1997?